

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JAN 03 2020

Clerk, U.S. Courts
District Of Montana
Missoula Division

JOHN O'SHEA,

CV 19-57-H-DLC-JTJ

Plaintiff,

vs.

ORDER

LYNN GUYER, WARDEN; PAUL REESE, JAMES HURST, CONNIE WINNERS, MONTANA STATE PRISON MEDICAL STAFF, and MELISSA SHARF,

Defendants.

On December 9, 2019 United States Magistrate Judge John T. Johnston entered his Order and Findings and Recommendations in response to Plaintiff John O'Shea's civil rights claims under 42 U.S.C. § 1983. (Doc. 4.) Judge Johnston screened O'Shea's Complaint, determined it to have merit, and ordered Defendants Reese, Hurst, and Winners to respond. (*Id.* at 2.) Judge Johnston recommends that the Court dismiss without prejudice Defendants Guyer, Montana State Prison Medical Staff, and Melissa Scharf because no allegations were raised against these Defendants in the Complaint. (*Id.* at 5.) O'Shea does not object. A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th

Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

There is no clear error in Judge Johnston’s determination that the Complaint does not allege any conduct on the part of Defendants Guyer, Montana State Prison Medical Staff, or Melissa Scharf that would give rise to liability. (See Doc. 2 at 6–7.) The Court will adopt the recommendation to dismiss those defendants.

IT IS ORDERED that Judge Johnston’s Order and Findings and Recommendations (Doc. 4) is ADOPTED in full. Defendants Guyer, Montana State Prison Medical Staff, or Melissa Scharf are DISMISSED WITHOUT PREJUDICE.

DATED this 3rd day of January, 2020.



Dana L. Christensen, Chief Judge
United States District Court